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MICHAEL RODAK, JR., CLE

Supreme Court of the United States

No. 73-1388

October Term, 1974

MURIEL WATT MEAD, *et al.*,
Petitioners,

vs.

HORVITZ PUBLISHING COMPANY, *et al.*,
Respondents.

ON APPEAL TO THE COURT OF APPEALS OF THE NINTH APPELLATE DISTRICT, LORAIN COUNTY, OHIO

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING AND PETITION FOR REHEARING

LAWRENCE LANDSKRONER
JOHN S. THOMAY
1306 Citizens Building
Cleveland, Ohio 44114
Counsel for Petitioners

LANDSKRONER & WEAVER CO., L.P.A.
Of Counsel

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

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On June 25, 1974, this Supreme Court rendered a far reaching decision on news media defamation law in the case of *Gertz v. Robert Welch, Inc.*, No. 72-617, which overturned the previous holding of *Rosenbloom v. Metromedia*, 403 U.S. 29, and now limits the landmark *New York Times* rule to only those publications covering public people and not private individuals. Interestingly enough, at the same time the Court was considering the *Gertz* case, counsel for Petitioners herein were embarked on the identical appellate road asking for the very same ruling on this case in these Honorable Chambers. A check of the Court Docket and records of this action will reveal that in March of 1974, Petitioners filed a Petition for Certiorari on behalf of a private individual named Muriel

Watt Mead for injury she sustained as the result of a grossly inaccurate and inflated list of her creditor accounts published in the Lorain Journal, the only newspaper in town. Because the trial court had previously applied the *New York Times* rule to our case, Question of Law #2 concerning the legal propositions set forth in *Rosenbloom* was brought directly to the attention of this Court in our Petition for Certiorari. This question formed the nucleus of Petitioner's brief.

The facts in the case at bar and the facts presented in *Gertz* are strikingly similar and the legal issues identical. For some reason, this Court chose to hear arguments on *Gertz* but deny Certiorari on our case also pending before it at the same time, leaving absolutely no further legal recourse for an elderly lady who fell victim to a viperous scheming political hierarchy made up of local attorneys, accountants, news media and businessmen all closely associated with the bench of Lorain County Common Pleas Court who did everything possible procedurally to deny this woman her rightful day in court before a jury of her peers.

Like *Gertz*, Mrs. Mead is purely a private individual. Both persons in a sense, are professional service people. Mr. Gertz is an attorney. Mrs. Mead invested in real estate. Both fell victim to horrendous printed lies and in each instance, these lies did great damage to the professional standing of the litigants which in the particular case of Mrs. Mead led to total financial ruin and permanent impairment to her health. Petitioner believes that her case should rightfully and logically have been joined with the *Gertz* case. Such action would have finally accorded Mrs. Mead the first true act of justice in the whole history of this case. Suffice it to say, obviously for whatever reason, this was not done.

However, the Petitioner still has faith in the wisdom, integrity and forthright dedication to justice engrained in the nine great men of this Court. Accordingly, she now respectfully requests leave to file a Motion for Rehearing of the denial of certiorari made in this case which came only a month before the rendering of the *Gertz* decision.

Petitioner steadfastly contends that under the new test espoused in *Gertz*, there can be no doubt now that the trial court in the present case committed serious reversible error. In light of the close proximity of these two cases, and the very grave injury committed to the dignity and worth of a private human being, counsel for petitioner believes there are more than enough ample grounds for the Court to so order.

PETITION FOR REHEARING

A careful reading of the *Gertz v. Welch, Inc.*, Case No. 72-617, reveals very important changes in defamation law as applied to protection accorded our news media in publications concerning the activities of private individuals. Formerly under *Rosenbloom*, it was imperative to show either (1) the defamator's predisemination knowledge of an article's falsity or (2) such reckless disregard as to constitute malice before an injured party could recover for libelous statements whose content concerned matters of public interest. Now, by *Gertz*, this application of *New York Times* strict standard has been greatly narrowed to only persons who are of general fame and notoriety and whose actions in the particular matter under consideration will likely influence resolution of the issues involved in that matter.

In the case now before this Honorable Court, we see no such person who should be accorded the First Amendment privilege doctrine. Under the new test set forth in *Gertz* there can no longer be any doubt that lower court Judge Robert E. Henderson committed serious reversible error. Basically, the *Mead* case concerns an elderly lady whose dream of being owner of an apartment building was shattered by several men who conspired to print an untrue article in the local newspaper knowing that when gross overstatements of her creditors' accounts hit the press, it would cause an avalanche of creditors' claims and foreclosure later allowing them to buy out the business at a bargain price.

To allow the press to be used as a vehicle for such a plan certainly must shock one's conscience. The average private American has a right to expect responsible journalism and the right to judicial recourse if the press does not act with true professionalism in its gathering of the news.

The Petitioner, Muriel Watt Mead, is just one such individual. She was but a mere citizen whose sole business was a real estate investment. She was not in the limelight. Her business enterprise, co-petitioner, Washington Square, was a privately owned company. Both she and the company were financially ruined by the defamatory article in question. Neither party ever had the opportunity to contradict the lies or correct the error. They were denied their legal rights in discovery by judicial fiat at every stage of the proceeding below, where the respondents filed an enormous bank of obstructive discovery pleadings, each sustained by the judge. Their number literally staggered the imagination and culminated with the last final blow rendered by the trial court granting summary judgment thereby denying Petitioners' their constitutional due process right to a trial by jury.

Should the Supreme Court elect to grant this Motion for Reconsideration and finally give the first ray of hope for justice to the Petitioner, it will not be doing so in vain. The facts and evidence below are more than enough to support the contention that Summary Judgment was wrongfully adjudged by the trial court.

Strictly legally speaking, Ohio procedural law on summary judgment is identical to Federal Law. It is found in Ohio Rule 56 which is based on Federal Rule 56. It specifically provides:

> "A summary judgment shall not be rendered unless it appears from such evidence . . . and only therefrom that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the Motion for Summary Judgment is made." (Emphasis added.)

In so doing, Ohio Courts have uniformly held that the trial court cannot weight the facts in issue, but need only determine if any issue of facts exists. More particularly, *Boulds v. Smith*, 18 Ohio Ops. 2d 305, reads:

> "Respondents' motion for summary judgment should not be allowed if there is a genuine issue of material fact proper for trial. *The duty of the court is to determine* not what the facts are, but whether such an *issue of facts exists.*" (Emphasis added.)

Thus, the procedure for determining whether a movant should be entitled to Summary Judgment is to construe the evidence most strongly in favor of the person against whom the Motion is made, then see if reasonable minds could only come to but one conclusion which is adverse to that party. *Horvath v. Fisher Foods, Inc.*, 38 Ohio Ops. 2d 113. In accordance, the Court must deny any Motion if investigation of the evidence reveals any genuine issue as to a material fact. *Rainey v. Harshbarger*, 38 Ohio Ops. 2d 374.

As stated previously, the conspiracy herein centered around a newspaper article which appeared in the respondent, Lorain Journal, the only newspaper in town, purporting to be an accurate account of amounts owed by Washington Square to its creditors. Numerous factual issues in dispute are involved in the publication and dissemination of the contents of this article. Each area of dispute can be found in the record and is verified by affidavits vs. contra-affidavits, petitioners' Answers to Interrogatories vs. respondents' Answers to Interrogatories, petitioners' deposition vs. respondents' depositions, and last but not least, the actual libelous printed list of Creditors Accounts as opposed to the real list of Creditors Accounts and actual amounts owed at the time the article was printed.

Briefly, the more major disputed issues are as follows:

1. Truth of the Article Itself

PETITIONER CONTENDS	RESPONDENTS CONTEND
The article in the newspaper stated different amounts than the list upon which it was based and left out certain asterisks explaining special nature of certain accounts.	Content of the article appearing in the newspaper was identical to the list from which it came and "was published without alteration of any kind."

	Amount Actually Due	Amount Claimed Due
Claude Plumb	– 0 –	6,258.23
*Amherst Hardware	– 0 –	49,000.00
Northern Ohio Roofing	325.00	3,479.47
Kuhn's Ornamental Iron Railings	2,014.26	5,987.78
N & M Landscaping, Inc.	500.00	1,147.00
Yacobozzi Plastering, Inc.	4,000.00	5,055.36
Krupp Painting Co.	2,660.00	8,350.47
Frank, Seringer and Chaney	– 0 –	700.00
*Raymond Plumbing & Heating	– 0 –	7,500.00
Alan Freach Co.	– 0 –	69.50
Lorain Roofing Co.	– 0 –	1,400.00
Craford Door Co.	– 0 –	69.00
Plas Construction Co.	5,502.96	12,684.32
**Columbia Gas Co.	– – –	90,000.00
Batsum Bros. Co.	– 0 –	1,377.90
James McDaniel	– 0 –	48.00
Wagner Signs	– 0 –	27.50
Bryant Manufacturing Co.	– 0 –	110.87

* These items were to be paid by the Columbia Gas Company of Ohio from the proceeds of a $90,000.00 second mortgage.

**Columbia Gas Company was not a construction creditor but instead a second mortgage.

2. Identity of the Source of Information for the Article.

PETITIONER CONTENDS	RESPONDENTS CONTEND
The article itself implies that respondent's accountant submitted the information to the Lorain Journal and there is evidence to show he was in contact with the newspaper a few days prior to actual printing of the article.	The newspaper refuses to identify the party. Respondent accountant Frank denies he ever talked to the Lorain Journal.

3. Acts by Respondent Indicative of Negligence or Malice.

PETITIONER CONTENDS	RESPONDENTS CONTEND
Newspaper employee respondent Jack Lavriha wrote the article without clearance from his editor. Newspaper editor respondent Leibowitz promised to print a retraction but later refused to do so when given the correct list of accounts and creditors. Furthermore, no effort was ever made by the newspaper to verify the information. Moreover, agents of the newspaper and several contractors knew of the falsity of the article both before and after its publication.	Respondent Jack Lavriha says he obtained clearance for the article and printed it in honest belief that all facts contained therein were true. Respondent Leibowitz denies ever promising to print a retraction. Furthermore, each respondent denies any communication with each other respondent, either by telephone, personal communication or by correspondence concerning either a conspiracy or the libelous article.

4. Dual Interest Representatives by Respondent Accountant Frank and Respondent Attorney Warhola in Violation of Professional Ethics.

PETITIONER CONTENDS	RESPONDENTS CONTEND
Respondent Accountant Frank prepared and had access to the books of Washington Square, Inc. He is shown as a creditor in the published article. At the same time, he represented and was on the Board of several of the respondent contractors as well as associated with Brandywine and Saratoga Companies, who were the eventual purchasers of the Washington Square Apartments at a bargain price in foreclosure. Similar conflicts exist for Attorney Warhola.	Respondent Accountant Frank claims he never had knowledge of the company's net worth prior to the period of time one month before the article was published. He even goes on to say that he was never Mrs. Mead's accountant. Respondent Attorney Warhola also denies any sort of dual conflict of interest.

5. Nature and Objective of Meeting Held Shortly Before Libelous Article was Published.

PETITIONER CONTENDS	RESPONDENTS CONTEND
Respondents Warhola and Frank told Mrs. Mead that if they were given a free reign to work out various financial agreements with creditors of Washington Square, that everything would be straightened out. Furthermore, that petitioner was asked to personally contribute $96,000 of her own money to save the company.	Respondent Frank says he was elected as trustee and repondent Warhola appointed as his legal representative in the bankruptcy of Washington Square, Inc. He also denies making any request for Mrs. Mead's personal monetary contribution.

6. Slanderous Remarks by Various Respondents

PETITIONER CONTENDS	RESPONDENTS CONTEND
Respondent Warhola in the presence of several subcontractors stated, "I'll get you and your husband if it's the last thing I do." Mrs. Mead's phone was subjected to illegal wiretaps and she received anonymous phone calls calling her a "stupid woman" and threats such as "you better sign everything over to Warhola or you'll be sorry."	Respondent Warhola and all other respondents deny any derogatory statements or harassing remarks and conversations or wiretaps as alleged by petitioner.

These are just a few of the myriad of conflicting areas and allegations, which, if detailed, would fill a volume of reading. Suffice it to say, all these items go to the very heart of intent, motive, fraud, and subjective feelings which are only determinable by the trier of fact and not to be summarily weighted by the Court as occurred here. Certainly the case at bar falls outside the *New York Times* rule according to *Gertz* where each of the aforementioned areas would obviously have great bearing in a defamation action. Mrs. Mead is an elderly lady never in the public limelight. Washington Square was formed solely to construct and operate one small apartment building of little interest to anyone. It was a privately owned entity. Its financial status could be no more than a passing concern to anyone except the immediate parties to this lawsuit. It has no registered securities on any open market.

Everyday the business world sees floundering companies who may or may not end up in eventual bankruptcy. In the normal course of news reporting, petitioner fails to understand how information pertaining to a company's open credit accounts could hardly be a matter sub-

ject to newspaper privilege. As a matter of fact, the very publication and degree of detailed information printed by respondents in this case can only give rise to much suspicion as to their real motive in including the list in the paper at all.

Thus, it is with the recent intervening circumstances of substantial and controlling effect of the *Gertz* case along with the great need to accord justice in the present case that counsel for petitioner now hereby respectfully requests this court grant rehearing of Petitioners' previous request for Certiorari in this matter.

Respectfully submitted,

LAWRENCE LANDSKRONER
JOHN S. THOMAY
1306 Citizens Building
Cleveland, Ohio 44114
Counsel for Petitioners